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| 09/888,273 | 06/22/2001 | David W. Burns | 2207/ 11315 | 8639 |
| 25693 | 7590 | 10/09/2007 | EXAMINER | |
| KENYON & KENYON LLP RIVERPARK TOWERS, SUITE 600 333 W. SAN CARLOS ST. SAN JOSE, CA 95110 | | | MEONSKE, TONIA L | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | |
|------------------------------|------------------|--------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/888,273 | BURNS ET AL. |
| | Examiner | Art Unit |
| | Tonia L. Meonske | 2181 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on July 19, 2007.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,2,4-10,12-18,20-26 and 28-30 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,2, 4, 5, 6,7,9,10,15,17,18,23,25 and 26 is/are rejected.

7) Claim(s) 8,12-14,16,20-22,24 and 28-30 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application

6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 2 and 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Referring to claim 2, in line 2, the limitation "a value stored in the first starting counter" is unclear. Is the value the same value in claim 1, line 9, or some other value? Please clarify. Appropriate correction is required.
4. Claims 4-6 are rejected for incorporating the defects of claim 2.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 7, 9, 10, 15, 17, 18, 23, 25 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson, US Patent Application Publication No. US 2002/0138670 (Hereinafter Johnson).

3. Referring to claim 1, Johnson has taught a method of assigning thread priority comprising:

- a. assigning priority to a first thread in a multi threaded processor (page 2, paragraphs [0021] and [0022], Figure 2, element 20, Figure 3, element 102, Priority is assigned to a first I/O request, or thread, based on the priority of the LUN submitting the request.);
- b. loading a preliminary value to a thread precedence counter (page 2, paragraphs [0021] and [0022], The high priority counter is loaded with an initialization value of zero. For each high priority I/O request received, the High Priority counter, element 26, increments the high priority counter to a preliminary value.);
- c. assigning priority to a second thread in response to expiration of said thread precedence counter (page 2, paragraphs [0021] and [0022], Figure 4, elements 156, 158, and 162, A low priority request is sent to the device driver in response to the high priority counter, or thread precedence counter, expiring.);
- d. determining if there is an indication of approaching instruction side starvation for said first thread wherein instruction fetching for said first thread would be blocked due to processing one or more instructions from another thread (Figure 4, elements 164 and 166, The starvation counter determines when I/O requests, or threads, would be blocked from being fetched by the device driver due to other I/O requests, or other threads.); and

e. incrementing a value stored in a first starting counter in response to an indication of approaching instruction side starvation for said first thread (Figure 4, element 172).

4. Referring to claim 2, Johnson has taught the method of claim 1, as described above, and wherein said preliminary value is based on the value stored in the first starting counter associated with said first thread (Figure 3, The incremented preliminary value, determined at element 108, is based on the priority value assigned and determined at elements 102 and 104.).

5. Referring to claim 7, Johnson has taught a method of assigning thread priority comprising:

a. assigning priority to a first thread in a multi threaded processor (page 2, paragraphs [0021] and [0022], Figure 2, element 20, Figure 3, element 102, Priority is assigned to a first I/O request, or thread, based on the priority of the LUN submitting the request.); and

b. assigning priority to a second thread (Figure 4, element 162, A low priority request is sent to the device driver.) in response to one of a plurality of conditions being true, the conditions consisting of

i. if a thread precedence counter expires (Figure 4, elements 156 and 158, A low priority request is sent to the device driver if the high priority counter, or thread precedence counter, expires.);

ii. if processing of said first thread retires an instruction from said first thread (This element not required as it is claimed in the alternative.); and

iii. if there is not an indication of approaching instruction side starvation for said first thread wherein instruction fetching for said first thread would be blocked due to processing one or more instructions from another thread (This element not required as it is claimed in the alternative.).

6. Referring to claim 17, Johnson has taught a computer system comprising:
 - a. a memory to store instructions for first and second threads (Figure 2, at least elements 24 and 22);
 - b. a processor including control logic coupled to said memory to assign priority between said first and second threads (Figure 2, elements 8 and 20);
 - c. a thread precedence counter coupled to said control logic (Figure 2, element 26) wherein priority is assigned to said second thread after said thread precedence counter expires (Figure 4, element 162) wherein said control logic is to determine if there is an indication of approaching instruction side starvation for said first thread wherein instruction fetching for said first thread would be blocked due to processing one or more instructions from another thread (Figure 4, elements 164 and 166, The starvation counter determines when I/O requests, or threads, would be blocked from being fetched by the device driver due to other I/O requests, or other threads.) and to increment a value stored in said first starting counter in response to an indication of approaching instruction side starvation for said first thread (Figure 4, element 172).

7. Claims 9, 10, 15, 18, 25 and 26 have nothing over claims 1, 2, 7, 2, 17 and 2, respectively, and are therefore rejected for the same reasons as set forth in claims 1, 2, 7, 2, 17 and 2.
8. Claim 23 has nothing over claims 7 and 17 and is therefore rejected for the same reasons as set forth in claims 7 and 17.

Response to Arguments

9. Applicant's arguments filed July 19, 2007 have been fully considered but they are not persuasive.
10. On pages 12 and 13, Applicant argues in essence:

*"Applicants respectfully submit nowhere in Johnson is the teaching or suggestion of a method of assigning *thread priority* comprising determining if there is an indication of approaching instruction side starvation for said first thread wherein instruction fetching for said first thread would be blocked due to processing one or more instructions from another thread (e.g., as described in claim 1).*

The Office Action asserts Johnson teaches the relevant limitations, citing Figure 4, elements 164 and 166. See Office Action dated 3/19/2007, paragraph 19. Applicants disagree.

The description of elements 164 and 166 of Figure 4 is as follows: "In such case, the device driver filter 8 determines (at block 164) whether there are any deferred I/Os pending in the low priority I/O queue 24. If not, then control ends as no consideration of any deferred low priority I/Os is necessary. Otherwise, if there are deferred low priority I/Os, then the device driver filter 8 determines (at block 166) whether the starvation counter 28 is at the maximum possible value."

The cited element block 164 describes determination of whether there are any deferred I/Os pending in a low priority queue, and if not, discontinuing consideration of low priority I/Os. Otherwise, at block 166, a device driver filter determines whether a starvation counter is at the maximum possible value.

Applicants submit the cited section fails to teach or suggest the relevant limitations, for at least the reason that it does not describe determining if there is an indication of approaching instruction side starvation for said first thread or blocking instruction fetching for said first thread due to processing one or more

instructions from another thread. Indeed, the cited section does not describe instruction side starvation or blocking instruction fetching even generally.”

However, in Johnson when there are low priority instructions that are waiting to be executed and the counter is not at a maximum value, then that is interpreted to be an indication of approaching instruction side starvation because the lower priority instructions/requests are being starved from being fetched or retrieved from the device driver. The lower priority request is starved or blocked from being fetched by a higher priority request. As a result the starvation counter is incremented which will ultimately prevent instruction side starvation. Therefore Johnson has in fact taught assigning thread priority comprising “determining if there is an indication of approaching instruction side starvation for said first thread wherein instruction fetching for said first thread would be blocked due to processing one or more instructions from another thread” as in claim 1 (see Figure 4). Therefore this argument is moot.

Allowable Subject Matter

11. Claims 8, 12-14, 16, 20, 21, 22, 24 and 28-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tonia L. Meonske whose telephone number is (571) 272-4170. The examiner can normally be reached on Monday-Friday with first Friday's off.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alford Kindred can be reached on (571) 272-4037. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TLM



/Tonia L. Meonske/
Tonia L. Meonske
September 20, 2007